

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 1:02-00241-03

KEVIN IVAN ANTHONY

MEMORANDUM OPINION AND ORDER

Pending before the court is defendant's motion, brought pursuant to 18 U.S.C. § 3582(c)(2), to reduce his sentence based on a subsequent reduction in the applicable sentencing guideline. On November 1, 2007, the United States Sentencing Guidelines were amended to reduce by two levels the guidelines in Section 2D1.1 for cocaine base (also known as crack). Subsequently, the Sentencing Commission amended Section 1B1.10 to make the crack amendment retroactive, effective March 3, 2008.

The court has received and considered the Original Presentence Investigation Report (PSI), the Judgment and Commitment Orders and Statement of Reasons, addendum to the PSI from the Probation Office, memoranda filed by defendant and the United States, and other matters of record. The court has also considered the applicable factors under 18 U.S.C. § 3553(a), consistent with § 3582(c)(2), and public safety.

Having reviewed the materials of record, the court has determined that defendant's motion must be **DENIED**. As defendant concedes, because of the quantity of drugs attributed to him at

sentencing, his sentencing range did not change as a result of the amended guideline.

The Clerk is **DIRECTED** to send a copy of this Memorandum Opinion and Order to defendant, counsel of record, the United States Probation Office, and the United States Marshal for the Southern District of West Virginia.

It is SO ORDERED this 16th day of March, 2009.

ENTER:

David A. Faber

David A. Faber
Senior United States District Judge